S.B. CIVIL WRIT PETITION NO.3030/2005

Mehboob Khan. Vs. ADJ No.2, Bikaner and others.

Date : 25.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. A Vyas for Mr. BK Vyas, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 13.4.2005 by which the trial court dismissed the petitioner's application under Order 9 Rule 7 CPC for setting aside the ex-parte order.

The summon of the suit was served upon the petitioner through his brother and on 16.10.2001, ex-parte order was passed by the trial court. The proceedings continued for evidence of the plaintiff and on 16.3.2005, the petitioner submitted application for setting aside the ex-parte order.

The trial court, after considering the facts of the case in detail held that the application has been filed after inordinate delay and, therefore, the ex-parte order cannot be set aside.

It will be relevant to mention here that the suit is for partition of the property and, therefore, all the

parties in the suit relate to each other. It cannot be believed that the petitioner could not come to know about the partition suit in four years.

In view of the above, even if the petitioner's contention is accepted that the service was not proper, then also the ex-parte order cannot be set aside as the petitioner failed to prove that he had no knowledge of the suit. Therefore, I do not find any illegality in the impugned order passed by the court below so as to call for interference by this Court under writ jurisdiction.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya